Petition not printed

No. 1030

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CHARLES ELMORE CROPLEY
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1941

ELLA H. TINKOFF, DEBTOR, AND
PAYSOFF TINKOFF, CREDITOR-CLAIMANT,
Petitioners,

VS.

BEN GOLD, TRUSTEE OF ELLA H. TINKOFF, DEBTOR, AND
DAVID STORAGE AND MOVING COMPANY, AND
ALBERT J. MENDELSSOHN, AS AUCTIONEER,
Respondents.

SUGGESTIONS IN OPPOSITION TO PETITION FOR CERTIORARI AND/OR MANDAMUS.

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Chicago, Illinois.

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Now come the respondents-appellees, David Storage and Moving Company, a corporation, and Albert J. Mendelssohn, by Robert Mack David, their attorney, and respectfully pray that leave be granted them to file the following suggestions to the petition for certiorari and/or mandamus heretofore filed herein by the petitioners Ella H. Tinkoff and Paysoff Tinkoff and further pray that, if leave be granted, that the said suggestions be filed instanter.

The decision below by the Circuit Court of Appeals for the Seventh Circuit is reported in 123 Fed. (2) at page 528 (Advance Sheets—No. 5). The court below, on page 529 of its opinion, said:

"Appellants make numerous assignments of error, but to us it is clear that upon the record here presented, the question we are called upon to decide is: Did the District Court, sitting as a court of bankruptcy, have the power to vacate the restraining order of July 15.

"As before noted, the contract authorized David Storage to sell the chattels at public auction in the event the storage charges were not paid when due. In our case no fraud appears or is alleged, no denial is made that the storage charges are due and unpaid, nor is it claimed that David Storage has done or intends to do any act not authorized by the contract. Under such circumstances the bankruptcy court was empowered to allow the warehousemen to proceed with the sale. *In re Mertens*, 2 Cir., 144 F. 818, 823; *In re Mayer*, 2 Cir., 157 F. 836. See also *Straton et al.* v. *New*, 283 U. S. 318, 51 S. Ct. 465, 75 L. Ed. 1060."

As shown by the record and the opinion of the Circuit Court of Appeals, the only question considered by the court was the right of a court of bankruptcy to permit the warehouse company to proceed with its enforcement of its Illinois statutory lien upon the Tinkoff property, and has decided the question in the affirmative, which is supported by the authorities cited above, including the opinion of this court in *Straton* v. *New*, *supra*, in which latter case this court, on page 331 of the official report, said:

"* * * As heretofore noted, there are a few cases which have held that the bankruptcy court may enjoin proceedings brought prior to the filing of the petition, to enforce valid liens which are more than four months old at the date of bankruptcy; but these cases are contrary to the decisions of this court and to the great weight of federal authority. * * *"

Respondent's lien, at the time of the filing of the voluntary petition under Chapter XII in the District Court in Illinois, was more than four months old.

The foregoing represents the only question decided in the case, and the appellants' attempt to confuse this question by the introduction of many other propositions is intended merely for the purpose of misleading this court. This course of procedure by Paysoff Tinkoff, as disclosed by this record, in attempting to confuse and mislead the Court, is typical of the many proceedings in which he has heretofore engaged in all of the courts in Illinois and in this Court.

In conclusion, respondents respectfully ask that the petition for certiorari, or in lieu thereof, the mandamus prayed for by petitioners, be denied, on the ground that the single question involved in this case has been previously determined by this Court.

Respectfully submitted,

Robert Mack David,
Attorney for David Storage and Moving Company and Albert J. Mendelssohn, Respondents.